

August 7, 1979 - from 44 FR 46414 (Proposed Regulations for Registration of Pesticides by States to Meet Special Local Needs)

Following are excerpts from this document which support the idea of states imposing more stringent restrictions through state registrations under 24(c) than are on the federal EPA-registered label. Refer to the 40 CFR sections for detail of the actual regulations that are being discussed.

Regarding 40 CFR 162.152(c)

“Finally, paragraph (c) makes it clear that the States are free to impose time limits on, or revoke or suspend, parallel State law registrations issued by them, as permitted by State law. Such actions will, for all practical purposes, effectively limit or terminate the registration within that State, even though they do not automatically affect the technical validity of the FIFRA registration for purposes of Federal law. However, if the State action is based on health, safety, environmental, or other substantial concerns, EPA will, in consultation with the State, take appropriate action under FIFRA. Such action may include suspension or cancellation of the registration under section 6 of FIFRA.”

“Proposed §162.153(e) specifies in more detail than the proposed 1975 rules what the labeling for section 24(c) registrations must contain. In general, the labeling must meet the requirements of federally approved labeling under 40 CFR 162.10. Information to be contained in supplemental labeling for amendments to federal registrations represents the minimum information needed to ensure safe use of the product should the supplemental labeling be inadvertently separated from the original federally approved labeling. [EPA emphasizes, however, that both supplemental and original labeling for such products *must*, under section 12 of FIFRA, accompany the product at the time of use.] In addition, the section makes allowances for States exercising their power to impose additional restrictions on pesticide use, by permitting the addition of new precautions and restrictions on supplemental labeling for any State registered product.”

“Proposed §162.153(g) specifies situations in which a State must classify a product or use as a restricted use pesticide. In general, this must be done when the registration is for a product similar to a federally restricted use pesticide, or for an additional use of a federally restricted use pesticide. Of course, States have the discretion to restrict, or not to restrict, any product or use not specifically required to be restricted by this rule.”

January 7, 1981 – 46 FR 2008 – State Registrations of Pesticides to Meet Special Local Needs (final rule)

Regarding the intent and meaning of 40 CFR 162.153(e)(5) (excerpt from 46 FR 2011)

“That section does not allow States to classify pesticides for restricted use under FIFRA. It merely recognizes that many States have authority to classify pesticides under State law, and that it is possible that special conditions in a State may warrant a restriction of a pesticide use

which is not restricted by EPA. States have always been free to impose such additional restrictions on pesticide use within their jurisdictions under sec. 24(a) of FIFRA, provided that they do not violate sec. 24(b) by altering the approved federal labeling or packaging in any way not specifically authorized by EPA. **The agency has long recognized and sanctioned such action by States, and 162.153(e)(5) merely confirms this fact and lays down certain procedures which will ensure that States do not violate sec. 24(b) in exercising their authority. Of course, such an additional restriction under State law is enforceable only under State law, not under FIFRA sec. 3(d)."**

September 3, 1975 - Previous FR Publication of Proposed Regulations for Implementing FIFRA Section 24(c)

Although the FR notice (proposed rule) of 1979 states that the proposed regulations are **"offered in lieu of the proposed rules establishing the interim section 24(c) program published in September 3, 1975 (40 FR 40538),"**

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to "broaden the States' authority to issue such registration, while they correspondingly limit EPA's authority over the State registration process." (quote from 1979 Proposed Rule)

September 3, 1975 (40 FR 40538) Regulations for State Registration of Pesticides to Meet Special Local Needs (Notice or proposed rule);

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The following is based on the contents of that document, and where indicated directly quoted.

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This document referred to Senate Report No. 92-838 (6-07-72), from the Committee on Agriculture and Forestry which stated:

"The purpose of this subsection is to give a State the opportunity to meet expeditiously and with less cost and administrative burden on the registrant the problem of registering for local use a pesticide needed to treat a pest infestation which is a problem in such State but is not sufficiently widespread, to warrant the expense and difficulties of Federal registration."

This was reemphasized in Part II of Senate Report No. 92-838 (10-03-72); and a similar explanation appeared in the House of Representatives Report No. 92-511 (9-25-71). *(note: I was not able to locate either of these reports)*

Also, from this FR document: “[The language in these reports] clearly indicates that State registration is intended solely to provide a means of dealing with problems that arise, in part, because of gaps in EPA registrations. Accordingly, the proposed regulations define “special local need” in terms of the existence, **safety and efficacy**, and availability of EPA-registered pesticide products. Thus, the definition of “special local need” enumerated the reasons a State agency should be permitted to register one or more pesticide products under 24(c), as follows (*direct quote*):

“Special Local Need” means a pest problem (existing or likely to occur within a State) which cannot be effectively controlled because:

- 1) There is no pesticide product registered by EPA for such use; or
- 2) There is no EPA-registered pesticide product which, **under the conditions of use within the State, would be as safe and/or as efficacious for such use within the terms and conditions of EPA registration**; or
- 3) An appropriate EPA-registered pesticide product is not available.

In the preamble of this document, it further explains (2) as:

“There is an EPA-registered pesticide product which, nominally, is suitable but, if used in accordance with the label, would not be as safe or as efficacious under the local conditions.”

From the 1975 FR Document, Proposed Definitions:

Types of State Registration Actions

- 1) To permit the use of new products.
- 2) To amend EPA registrations for one or more of the following purposes:
 - i. To permit use on additional crops or animals;
 - ii. To permit use at additional sites;
 - iii. To permit use of additional application techniques or equipment;
 - iv. To permit use at different application rates; and
 - v. **To prescribe special label directions for one or both of the following purposes:**
 - A. **Preventing unreasonable adverse effects on man or the environment under local use conditions, or**
 - B. Providing for local use conditions affecting pesticide efficacy.
- 3) To serve other purposes specifically identified in the approved State plan.

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